KIYOSO METAL CO. SDN. BHD. v. INTERSISTEM DEVELOPMENT (M) SDN. BHD. & ANOR.

[O.C.J. (Zakaria Yatim J.) August 5, 1986]

[Kuala Lumpur – Civil Suit No. C2009 of 1984]

Practice and Procedure – Garnishee order – Application for leave to issue – Conflicting evidence in affidavits – Whether matter is suitable for trial – R.H.C. 1980, O.49 r.5.

On July 20, 1984, the judgment creditor obtained judgments against the judgment debtor for a sum of $44,290.00 together with interest and costs. The judgment creditor applied to the Senior Assistant Registrar for leave to issue a garnishee order to show cause against the garnishee. The Senior Assistant Registrar granted leave to the judgment creditor to issue the garnishee show cause order. This is an appeal against the decision of the Registrar given on March 21, 1985, ordering the garnishee to pay the judgment creditor the debt due from the garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

Held: owing to the conflicting nature of the evidence in the affidavits, the present matter should go for trial under Order 49, rule 5 of the Rules of the High Court, 1980.

CIVIL SUIT.

P. Abraham for the garnishee/applicant.

K. Y. Leong for the judgment creditor/respondent.

Cur. Adv. Vult.

Zakaria Yatim J: This is an appeal against the decision of the Registrar given on March 21, 1985 ordering the garnishee to pay the judgment creditor the debt due from the garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment together with costs of the garnishee proceedings.

On July 20, 1984, the judgment creditor obtained judgment against the judgment debtor for a sum of $44,290.09 together with interest and costs. The judgment creditor applied to the Senior Assistant Registrar for leave to issue a garnishee order to show cause against the garnishee. The Senior Assistant Registrar granted leave to the judgment creditor to issue the garnishee show cause order.

In his affidavit affirmed on February 26, 1985, in support of the application for a garnishee order, Mr. Cheong Cheng Onn, on behalf of the judgment creditor, stated that the garnishee was indebted to the judgment debtor in the sum of $79,552.81. The judgment creditor made this statement on the basis of a letter (first letter) written by the chairman of the garnishee company to the judgment creditor on February 4, 1985. The letter, which was exhibited to the affidavit, is reproduced below:

"Kiyosu Metal Co. Sdn. Bhd., Date: 4.2.1985.
No. 75B, Jalan SS 22/23,
Damansara Jaya,
Petaling Jaya,
Selangor.

Dear Sirs,

Subject: OUTSTANDING ACCOUNT OF M$ 79,552.81 DUE TO MESSRS. INTERSISTEM DEVELOPMENT (M) SDN. BHD.

We refer to the above captioned subject. This is to confirm to you that Messrs Big Valley Development (M) Sdn. Bhd. owes a total amount of M$79,552.81 (Dollars: Seventy Nine Thousand Five Hundred And Fifty Two And Cents Eighty One Only) to Messrs Intersistem Development (M) Sdn. Bhd. as to date.

Thank you.

Yours faithfully,
for BIG VALLEY DEVELOPMENT (M) SDN. BHD.

Syed Mohd. Syed Abdul Rahman.
Chairman."

In his affidavit affirmed on February 26, 1985, the managing director of the garnishee company averred that what was stated by Mr. Cheong Cheng Onn in his affidavit was "untrue." Attached to the affidavit affirmed by the managing director was another letter (second letter) written by the chairman of the garnishee company to the judgment creditor dated March 3, 1985. In that letter the Chairman stated that the facts mentioned in his letter dated February 4, 1985, was a mistake due to accounting errors. The second letter is reproduced below:-

"Kiyosu Metal Co. Sdn. Bhd.
75B Jalan SS 22/23,
Damansara Jaya,
Petaling Jaya,
SELANGOR.

ATT: CHEONG CHENG ONN.

Re: Outstanding Account of $79,552.81 due to Messrs. Inter Sistem Development (M) Sdn. Bhd.

Dear Sir,

We refer to our letter dated 4/2/85 wherein, we informed

you that Messrs. Big Valley Development (M) Sdn. Bhd. owes us the above mentioned sum.

We wish to inform you now that the facts mentioned in the said letter was a mistake and was caused by accounting errors made by our Accounting Department.

We apologise for the errors and the inconvenience caused.

Thank you.

Yours faithfully,
Big Valley Development (M) Sdn. Bhd.
SYED MOHD. SYED ABDUL RAHMAN.
CHAIRMAN.

cc. Y.H. Tan & Co.
Advocates & Solicitors.

cc. Choong Yik Son, Mohd. Ali & Partners,
Advocates & Solicitors."

What was stated in the affidavit of the managing director of the garnishee company and in the second letter was confirmed by the judgment debtor. In his affidavit affirmed on May 29, 1985, the chairman of the judgment debtor company averred that the garnishee company was not indebted to the judgment debtor at all. In his affidavit he said,

"4. The truth of the matter is that the said Garnishee Company Big Valley Development (M) Sdn. Bhd. is not indebted to the Judgment Debtor Company Inter Sistem Development (M) Sdn. Bhd. for any sum at all.

5. There has never been any transactions between the Garnishee Company and the Judgment Debtor Company and therefore there is no question of any debt arising."

In a further affidavit affirmed on June 15, 1985, Mr. Cheong Cheng Onn reiterated that the garnishee company was justly and truly indebted to the judgment debtor by reason of the first letter. He added that sometime in early May, 1985, he was approached by a director of the garnishee company, who gave him a cheque for a sum of $14,821.89 being part payment towards the amount due and owing to the judgment creditor on behalf of the judgment debtor. According to him the cheque was dishonoured when presented to the bank.

The managing director of the garnishee company, in his further affidavit dated September 11, 1985, denied owing the judgment debtor any money. With regard to the cheque, he said, it was paid to the judgment creditor in respect of "amount purportedly owed by the garnishee company to the plaintiff and had nothing to do with the defendant company. . . " He added that his company had "trading transactions" with the judgment creditor company. According to him, there was a dispute between his company and the judgment creditor and because of that, payment on the cheque was stopped.

In view of the conflicting evidence contained in the affidavits, it is not clear whether there is any debt due to the judgment debtor. I agree with Mr. Prassad Abraham, Counsel for the garnishee, that the matter should go for trial. Order 49 rule 5 clearly states:

"Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order in Form 101 that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may tried, without, if it orders trial before the Registrar, the need for any consent by the parties."

In my judgment, this is an appropriate matter to be tried. I, therefore, set aside the order of the Registrar and order that the matter be set for trial under Order 49 rule 5. Costs in the cause.

Order accordingly.

Solicitors: *Y.H. Tan & Co; K.Y. Leong & Partners.*

DR. NG TENG KOK & ORS. v. CHEAH SEE KIAN & ORS.

[O.C.J. (Mohamed Dzaiddin J.) July 14 & October 8, 1986]

[Penang – Suit No. 22-58-1983]

Landlord and Tenant – Jurisdiction – Whether Sessions Court has jurisdiction to entertain claim for rent of $360 p.m. – Scope of Subordinate Courts Act, 1948, s. 70(3).

Jurisdiction – Sessions Court – Whether Sessions Court has jurisdiction to entertain claim for rent of $360 p.m.

In the present case, the plaintiffs claimed vacant possession of certain premises and for mesne profits against the first, second and third defendants. They also claimed damages against the fourth defendant for trespass. The issue before the court was whether the Sessions Court had jurisdiction to entertain the plaintiffs' claim under sub-section (3) of section 70 of the Subordinate Courts Act, 1948.